

# INTERIM REVISIONS TO THE CHILD PROTECTIVE SERVICES INVESTIGATION STANDARDS

Draft 5, November 2005

## INTRODUCTION

### Background

In June of 2003, DCFS issued an "Initial Response to 7<sup>th</sup> Circuit Court of Appeals Decision in Doe v. Heck" (DCFS Info Memo 2003-05). The 7<sup>th</sup> Circuit Court's decision over-ruled some of the directions in the **Child Protective Services Investigation Standards**, primarily those regarding contact with a child in private facilities without consent and contact with a child without consent of the parent when the parent is not suspected of maltreating the child or contributing to maltreatment of the child. All of the directives in DCFS Info Memo 2003-05 are still in effect.

Priorities established by the Program Enhancement Plan (PEP) have made it necessary to postpone comprehensive revisions to the CPS Investigation Standards. The development of some other policies included in the PEP, however, is contingent upon an understanding of how the Doe v. Heck decision impacts CPS initial assessment purposes and protocols. For that reason, interim revisions to the secondary caregiver and non-caregiver sections of the **Child Protective Services Investigation Standards**, incorporating relevant implications of the Doe V. Heck decision, are being issued. Specifically, the following instruction in DCFS Info Memo 2003-05 has been operationalized in the interim revisions: "It is important to emphasize that unless the parent or parents are suspected as the maltreater or are directly involved in the alleged abuse (e.g., prostituting their child, placing the child with a known maltreater), the parent must be consulted prior to any attempt to interview their child."

The revisions reinforce the 4<sup>th</sup> and 14<sup>th</sup> Amendment rights of privacy, family integrity and freedom from unreasonable search and seizure. They are also premised on the following basic principles:

- The best interests of the reported child are paramount
- The parents of a child who is alleged to have been maltreated by a secondary caregiver or non-caregiver are the most qualified to determine what is in the best interests of the child and have every right to do so
- In order to exercise their right to determine what is best for their child, parents need to be fully informed about the assessment process and possible outcomes of that process

### Affected Portions of the CPS Investigation Standards

**The following revisions do not affect all portions of the secondary caregiver and non-caregiver sections of the standards. Those portions of the secondary caregiver and non-caregiver sections of the standards that do not conflict with the interim revisions are still in effect.**

**The interim revisions do not incorporate other standards and revisions that have been published subsequent to 1994. All of those standards, e.g. "Standard for Collaboration with Law Enforcement Agencies on Child Abuse and Neglect Reports", "CAPTA: Referrals to Voluntary Services in CPS Cases", "CAPTA: Advising Alleged Maltreater of the Allegations in CPS Cases", "CAPTA: CPS Referrals to the Birth to 3 Program", etc., are still in effect and are unchanged by the interim revisions.**

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**Maltreatment by Staff of  
Licensed Day Care Programs  
Certified Family Day Care Homes**

"Staff of a Licensed Day Care Program" are all employees and volunteers of licensed group day care centers. In licensed family day care centers this includes providers, substitutes, volunteers and other adults living in the home or having regular contact with the children. This is also the appropriate Standard for maltreatment by an adult in any setting which is operating illegally without a license. A program must be licensed if care is provided for four or more children under the age of seven who are unrelated to the provider.

"Staff of Certified Family Day Care Homes" are providers, substitutes, volunteers and other adults living in the home or having regular contact with the children.

**Purpose**

In responding to reports of maltreatment by day care staff, the Child Protective Service (CPS) purpose is to:

- With parents, assess the current safety of the child;
- With parents, assess the child's need for services related to the alleged maltreatment;
- Support the child's parents in providing protection and services for the child, if needed; and
- When the assessment yields information which causes reason to suspect that other children have been maltreated, assess, with the parents of those children, their safety and service needs.

**Collaboration/Referrals**

The screened-in report must be referred to the appropriate local law enforcement agency if the alleged maltreater is an adult, in accordance with the Standard for Collaboration with Law Enforcement Agencies on Child Abuse and Neglect Reports. This enables the law enforcement and criminal justice system to pursue investigation of the alleged maltreater, if warranted, in order to protect the public safety. A referral must also be made to the DHFS licensing specialists, if maltreatment is by staff in a licensed day care program, or to staff of the certifying agency, if maltreatment is by staff of a certified family day care home. This enables the licensing and regulatory system to exercise its responsibility to address potential violation of administrative rules and policies as well as to take regulatory action regarding the alleged maltreater if warranted. Since CPS is, by design, a family-focused intervention, this system does not necessarily have remedies to address instances of maltreatment by day care staff. This heightens the need for collaboration and makes sharing information with systems which have those remedies imperative.

If the CPS agency chooses to make a maltreater determination, the agency must first coordinate with the law enforcement system to assure that a CPS maltreater determination will not undermine a criminal investigation or prosecution. Agencies may wish to address this issue in their MOU with law enforcement agencies.

**Decisions to be Made in the Course of the Initial Assessment/Investigation**

The following decisions and supporting rationale must be documented in the case record:

- Is the child in need of protection or services?
- If yes, does the parent need additional information, assistance or advocacy to provide the needed protection or services?

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- Is there information suggesting action must be taken to ensure child safety? If so, are the parents or is the facility or regulatory agency taking such action?
- Is the maltreatment substantiated? \*
- Is there information suggesting other children have been maltreated and may require social service intervention? [If so, an assessment should be initiated for each child suspected of having been maltreated or threatened with abuse or neglect. Pages 24 and 25 of the CPS Investigation Standards give guidance as to when this might be warranted.]
- Will the case be opened for ongoing services?

\* **NOTE:** A determination by the CPS system as to whether abuse or neglect occurred is required by law. A determination by the CPS system as to whether a specific person abused the child is not required by law.

### Interview Protocol

- The first contact **must** be with the child's parent, unless there are exigent circumstances and the parent cannot be contacted within the timeframe needed to respond to the emergency or there is a court order for an interview with the child. If exigent circumstances exist, there is discretion to conduct the interview as necessary for protection of a child or others. Supervisory and/or legal consultation is advised, if possible, prior to taking action based on a presumption of exigent circumstances.
- If the alleged maltreater continues to have access to the child, an interview with the parent is required by statute, "if possible". "If possible", in these standards, means an interview with the parent must be conducted unless the parent refuses to be interviewed.
- A child cannot be interviewed without the permission of the parent, except as discussed in the bullet below, unless there are exigent circumstances or there is a court order for the interview. An interview with the child is not required if the alleged maltreater does not have access to the child. If the alleged maltreater continues to have access to the child, observation of or an interview with the child is required by s. 48.981(3)(c)1., Stats. If CPS is interviewing the child based on parental permission alone (without a court order and absent exigent circumstances), the parent may determine who is present at an interview with the child; this decision is not solely at the discretion of the CPS worker.
- If the child is in a foster home or relative placement under a court order, the agency with court-ordered supervision of the child has the authority to grant permission to interview the child for the purpose of determining the child's need for protection or services. If the parent is not contacted for permission to interview the child (the supervising agency authorizes the interview instead), the parent must be advised of the allegations as soon as possible thereafter.
- If a parent has arranged for his or her child to be temporarily cared for by another person, and in the absence of exigent circumstances or a court order for an interview, the agency must seek to contact the parent first. This contact may be by phone. If the parent cannot be reached and will be unreachable within the timeframe for response determined at Access, the agency may request permission to interview the child from the person with whom the parent has placed the child for temporary care.
- An interview by CPS with the alleged maltreater is not required. However, if the agency intends to make a maltreater determination (i.e., that a specific person abused the child), the interview protocol must include an interview by CPS with the alleged maltreater, as well as an interview with the child and a parent. The interview with the alleged maltreater must begin with advising that person of the allegations against him or her.

If the person refuses to be interviewed by CPS, CPS may review the information gained from collaterals (e.g. law enforcement or licensing staff, etc.) throughout the assessment process and determine whether it is sufficient to support a maltreater determination.

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If the agency intends to make a maltreater determination, the agency has a responsibility to explain the CPS assessment process to the parent, including how the agency collaborates with law enforcement, and the possible actions that might occur as a result of that process, including the possibility of an appeal hearing and the child being subpoenaed to testify at the hearing, however unlikely. The parent needs this information in order to make an informed decision as to whether to consent to the child being interviewed.

### **When Maltreatment Should be Assessed in Accordance with the Standard for “Maltreatment By Parents”**

In the majority of cases of maltreatment by a Secondary Caregiver, the parents of the child did not knowingly or negligently contribute to the child's maltreatment. When a parent does contribute, the concerns must be assessed using the Standard for “Maltreatment By Parents”. Generally, the judgment about whether a parent contributed is made at Access. (Reference “CPS Access Standard for Receipt and Analysis of Report Information”, pages 14 and 15.) It is important to make this judgment at Access as the protocols for maltreatment by Secondary Caregivers and Non-Caregivers differ significantly from the Primary Caregiver protocols.

If during the course of conducting the initial assessment the CPS worker gathers information that indicates that a parent contributed to the maltreatment or is otherwise failing to protect the child, the requirements for Maltreatment By Parents must be followed. The Access Standard, Appendix 5: Parental Protective Capacities can assist with this judgment. A judgment that a parent contributed or is failing to protect the child may **not** be based solely on the fact that a parent declines to allow the child to be interviewed. In fact, this may be a demonstration of the parent's protectiveness of the child.

Judgments about whether a parent is failing to protect must take into account whether the parent reasonably has the ability to effect a safe environment on his or her own. For example, a parent cannot assure that a day care teacher has no contact with the child without the cooperation of the day care center, short of removing the child, which may not be a reasonable option for some parents.

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## **Maltreatment by Residential Facility Staff**

“Residential Facility Staff” are all employees and volunteers working in:

- Secured correctional facilities
- state mental health institutions
- state centers for the developmentally disabled
- Juvenile (secure and non-secure) detention facilities
- child caring institutions
- group homes
- shelter care facilities

This list is not exhaustive.

### **Purpose**

In responding to reports of maltreatment by residential care staff, the Child Protective Service (CPS) purpose is to:

- assess the current safety of the child and immediately address all threats to safety;
- assess the child's need for services related to the alleged maltreatment; and
- when the assessment yields information which causes reason to suspect that other children have been maltreated, assess the safety and treatment needs of those children.

### **Collaboration/Referrals**

The screened-in report must be referred to the appropriate local law enforcement agency if the alleged maltreater is an adult, in accordance with the Standard for Collaboration with Law Enforcement Agencies on Child Abuse and Neglect Reports. This enables the law enforcement and criminal justice system to pursue investigation of the alleged maltreater, if warranted, in order to protect the public safety. A referral must also be made to the appropriate licensing staff and to administrators of the institution, to the extent allowed by statute or other law (e.g. case law, regulatory law, etc.). This enables the licensing and regulatory system and the institutions administration to exercise their responsibility to address potential violation of administrative rules and policies, take immediate action to protect children pending the outcome of the investigation, and to take regulatory action regarding the alleged maltreater if warranted. Since CPS is, by design, a family-focused intervention, this system does not necessarily have remedies to address instances of maltreatment by residential facility staff. This heightens the need for collaboration and makes sharing information with systems which have those remedies imperative.

In addition, these investigations/assessments usually require collaboration among county agencies, as the county of primary residence of the child or children reported generally is different from the county where the residential facility is located.

If the CPS agency chooses to make a maltreater determination, the agency must first coordinate with the law enforcement system to assure that a CPS maltreater determination will not undermine a criminal investigation or prosecution. Agencies may wish to address this issue in their MOU with law enforcement agencies.

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### **Decisions to be Made in the Course of the Initial Assessment/Investigation**

The following decisions and supporting rationale must be documented in the case record:

- Is there information suggesting that action must be taken to ensure child safety? If so, is the facility or placing agency staff taking such action?
- Is there information indicating the child has service needs stemming from the maltreatment? If so, are such services being provided?
- Is the maltreatment of the child substantiated? \*
- Is there information suggesting other children have been maltreated and may require social service intervention?
- Is there information suggesting that the parents of the maltreated child need additional information to advocate for and assure their child receives needed services? [If so, an assessment should be initiated for each child suspected of having been maltreated or threatened with abuse or neglect. Pages 24 and 25 of the CPS Investigation Standards give guidance as to when this might be warranted.]

\* **NOTE:** A determination by the CPS system as to whether abuse or neglect occurred is required by law. A determination by the CPS system as to whether a specific person abused the child is not required by law.

### **Interview Protocol**

- The first contact should be with the child's parent. However, children are placed in these type of facilities with a court order, the parent cannot remove the child unilaterally, and the supervising agency has heightened responsibility for the child's safety and well-being. Therefore, the supervising agency can initiate or authorize initiation of the interview protocol to assess the child's need for protection or services, without a contact with the parent, if necessary to meet the time frame for response established at the point of access. Note: If exigent circumstances exist, there is discretion to conduct the interview as necessary for protection of a child or others. Supervisory and/or legal consultation is advised, if possible, prior to taking action based on a presumption of exigent circumstances.
- If the alleged maltreater continues to have access to the child, an interview with the parent is required by statute "if possible". "If possible", in these standards, means an interview with the parent must be conducted unless the parent refuses to be interviewed.
- A child cannot be interviewed without the permission of the parent or the agency with court-ordered supervision of the child, unless there are exigent circumstances or there is a court order for the interview. An interview with the child is not required if the alleged maltreater does not have access to the child. If the alleged maltreater continues to have access to the child, observation of or an interview with the child is required by s.48.981(3)(c)1., Stats. If CPS is interviewing the child without a court order and absent exigent circumstances, the parent or supervising agency may determine who is present at an interview with the child. Every reasonable effort must be made to interview the child, as the placing and supervising agency has heightened responsibility for the child in placement.
- If the parent is not contacted for permission to interview the child (the supervising agency authorizes the interview instead), the parent must be advised of the allegations as soon as possible thereafter.
- An interview by CPS with the alleged maltreater is not required. However, participation in an interview with the alleged maltreater may be warranted if the person continues or may continue to have access to the child. The CPS purpose in this interview is to assist in the assessment of the child's safety needs, risk of maltreatment and possible treatment needs of the child.

If the agency intends to make a maltreater determination (i.e., that a specific person abused the child), the interview protocol must include an interview by CPS with the alleged maltreater, as well as an interview with the child and a parent. The interview with the alleged maltreater must begin with advising

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that person of the allegations against him or her.

If the person refuses to be interviewed by CPS, CPS may review the information gained from collaterals (e.g. law enforcement or licensing staff, etc.) throughout the assessment process and determine whether it is sufficient to support a maltreater determination.

If the agency intends to make a maltreater determination, the agency has a responsibility to explain the CPS assessment process to the parent, including how the agency collaborates with law enforcement, and the possible actions that might occur as a result of that process, including the possibility of an appeal hearing and the child being subpoenaed to testify at the hearing, however unlikely. The parent needs this information in order to make an informed decision as to whether to consent to the child being interviewed.

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### **Maltreatment by Teachers and Other School Employees**

“Teachers and Other School Employees” includes teachers, aides, coaches, custodial staff, bus drivers, pupil services staff, administrators and any individuals employed by or under the supervision of the school district having contact with the child in the course of employment. The employment may be through a purchase of services contract. This applies to all schools, whether public, private or parochial.

#### **Purpose**

In responding to reports of maltreatment by school staff, the Child Protective Service (CPS) purpose is to:

- With parents, assess the current safety of the child;
- With parents, assess the child's need for services related to the alleged maltreatment;
- Support the child's parents in providing protection and services for the child, if needed; and
- When the assessment yields information which causes reason to suspect that other children have been maltreated, assess, with parents, their safety and service needs.

#### **Collaboration/Referrals**

The screened-in report must be referred to the appropriate local law enforcement agency if the alleged maltreater is an adult, in accordance with the Standard for Collaboration with Law Enforcement Agencies on Child Abuse and Neglect Reports. This enables the law enforcement and criminal justice system to pursue investigation of the alleged maltreater, if warranted, in order to protect the public safety. A referral must also be made to the school administrator, to the extent allowed by statute. This enables the school administration to exercise their responsibility to address potential violation of administrative rules and policies, inform regulatory agencies as required and take action to protect school children pending the outcome of the investigation,. Since CPS is, by design, a family-focused intervention, this system does not necessarily have remedies to address instances of maltreatment by school staff. This heightens the need for collaboration and makes sharing information with systems which have those remedies imperative.

Sec. 48.981(7)(a)17., Stats., states that the CPS record may be disclosed to “A federal agency, state agency of this state or any other state or local governmental unit located in this state or any other state that has a need for a report or record in order to carry out its responsibility to protect children from abuse or neglect or to protect unborn children from abuse.”

If the CPS agency chooses to make a maltreater determination, the agency must first coordinate with the law enforcement system to assure that a CPS maltreater determination will not undermine a criminal investigation or prosecution. Agencies may wish to address this issue in their MOU with law enforcement agencies.

#### **Decisions to be Made in the Course of the Initial Assessment/Investigation**

The following decisions and supporting rationale must be documented in the case record:

- Is the child in need of protection or services?
- If yes, does the parent need additional information, assistance or advocacy to provide the needed protection or services?
- Is there information suggesting action must be taken to ensure child safety? If so, are the parents or is the facility or regulatory agency taking such action?
- Is the maltreatment substantiated? \*



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- Is there information suggesting other children have been maltreated and may require social service intervention? ? [If so, an assessment should be initiated for each child suspected of having been maltreated or threatened with abuse or neglect. Pages 24 and 25 of the CPS Investigation Standards give guidance as to when this might be warranted.]
- Will the case be opened for ongoing services?

\* **NOTE:** A determination by the CPS system as to whether abuse or neglect occurred is required by law. A determination by the CPS system as to whether a specific person abused the child is not required by law.

### Interview Protocol

- The first contact **must** be with the child's parent, unless there are exigent circumstances and the parent cannot be contacted within the timeframe needed to respond to the emergency or there is a court order for an interview with the child. If exigent circumstances exist, there is discretion to conduct the interview as necessary for protection of a child or others. Supervisory and/or legal consultation is advised, if possible, prior to taking action based on a presumption of exigent circumstances.
- If the alleged maltreater continues to have access to the child, an interview with the parent is required by statute, "if possible". "If possible", in these standards, means an interview with the parent must be conducted unless the parent refuses to be interviewed.
- A child cannot be interviewed without the permission of the parent, except as discussed in the bullet below, unless there are exigent circumstances or there is a court order for the interview. An interview with the child is not required if the alleged maltreater does not have access to the child. If the alleged maltreater continues to have access to the child, observation of or an interview with the child is required by s. 48.981(3)(c)1., Stats. If CPS is interviewing the child based on parental permission alone (without a court order and absent exigent circumstances), the parent may determine who is present at an interview with the child; this decision is not solely at the discretion of the CPS worker.
- If the child is in a foster home or relative placement under a court order, the agency with court-ordered supervision of the child has the authority to grant permission to interview the child for the purpose of determining the child's need for protection or services. If the parent is not contacted for permission to interview the child (the supervising agency authorizes the interview instead), the parent must be advised of the allegations as soon as possible thereafter.
- If a parent has arranged for his or her child to be temporarily cared for by another person, and in the absence of exigent circumstances or a court order for an interview, the agency must seek to contact the parent first. This contact may be by phone. If the parent cannot be reached and will be unreachable within the timeframe for response determined at Access, the agency may request permission to interview the child from the person with whom the parent has placed the child for temporary care.
- An interview by CPS with the alleged maltreater is not required. However, if the agency intends to make a maltreater determination (i.e., that a specific person abused the child), the interview protocol must include an interview by CPS with the alleged maltreater, as well as an interview with the child and a parent. The interview with the alleged maltreater must begin with advising that person of the allegations against him or her.

If the person refuses to be interviewed by CPS, CPS may review the information gained from collaterals (e.g. law enforcement or licensing staff, etc.) throughout the assessment process and determine whether it is sufficient to support a maltreater determination.

If the agency intends to make a maltreater determination, the agency has a responsibility to explain the CPS assessment process to the parent, including how the agency collaborates with law enforcement, and the possible actions that might occur as a result of that process, including the possibility of an

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appeal hearing and the child being subpoenaed to testify at the hearing, however unlikely. The parent needs this information in order to make an informed decision as to whether to consent to the child being interviewed.

**When Maltreatment Should be Assessed in Accordance with the Standard for “Maltreatment By Parents”**

In the majority of cases of maltreatment by a Secondary Caregiver, the parents of the child did not knowingly or negligently contribute to the child's maltreatment. When a parent does contribute, the concerns must be assessed using the Standard for “Maltreatment By Parents”. Generally, the judgment about whether a parent contributed is made at Access. (Reference “CPS Access Standard for Receipt and Analysis of Report Information”, pages 14 and 15.) It is important to make this judgment at Access as the protocols for maltreatment by Secondary Caregivers and Non-Caregivers differ significantly from the Primary Caregiver protocols.

If during the course of conducting the initial assessment the CPS worker gathers information that indicates that a parent contributed to the maltreatment or is otherwise failing to protect the child, the requirements for Maltreatment By Parents must be followed. The Access Standard, Appendix 5: Parental Protective Capacities can assist with this judgment. A judgment that a parent contributed or is failing to protect the child may **not** be based solely on the fact that a parent declines to allow the child to be interviewed. In fact, this may be a demonstration of the parent's protectiveness of the child.

Judgments about whether a parent is failing to protect must take into account whether the parent reasonably has the ability to effect a safe environment on his or her own. For example, a parent cannot assure that a teacher has no contact with the child without the cooperation of the school.

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## **Maltreatment by Other Secondary Caregivers**

"Other Secondary Caregivers" are individuals who meet the definitions under s. 48.981(1)(am)5-8, Stats., but are not addressed by a more specific Standard (i.e., residential facility staff, licensed or certified day care staff or teachers and other school personnel). This includes more distant relatives of the child, as defined by statute: first cousin, 2nd cousin, nephew, niece, uncle, aunt, stepgrandparent, brother-in-law, sister-in-law, stepuncle or steppaunt. (Ref. s. 48.981(1)(fm), Stats.) In addition, it includes individuals who have provided care to children in or outside of their home, exercised temporary control over children or supervised children. A non-exhaustive list includes babysitters, youth activity leaders, and a parent in the home where a child is visiting or "sleeping over". The individual may be an adult or a child.

### **Purpose**

In responding to reports of maltreatment by other Secondary Caregivers, the Child Protective Service (CPS) purposes are to:

- With parents, assess the current safety of the child;
- With parents, assess the child's need for services related to the alleged maltreatment; and
- Support the child's parents in providing protection and services for the child, if needed

### **Collaboration/Referrals**

The screened-in report must be referred to the appropriate local law enforcement agency if the alleged maltreater is an adult, in accordance with the Standard for Collaboration with Law Enforcement Agencies on Child Abuse and Neglect Reports. This enables the law enforcement and criminal justice system to pursue investigation of the alleged maltreater, if warranted, in order to protect the public safety. Since CPS is, by design, a family-focused intervention, this system does not have remedies to address instances of maltreatment by other secondary caregivers. This heightens the need for collaboration with law enforcement and makes sharing information with the criminal justice system, which has those remedies, imperative.

If the CPS agency chooses to make a maltreater determination, the agency must first coordinate with the law enforcement system to assure that a CPS maltreater determination will not undermine a criminal investigation or prosecution. Agencies may wish to address this issue in their MOU with law enforcement agencies.

### **Decisions to be Made in the Course of the Initial Assessment/Investigation**

The following decisions and supporting rationale must be documented in the case record:

- Is the child in need of protection or services?
- If yes, does the parent need additional information, assistance or advocacy to provide the needed protection or services?
- Is there information suggesting action must be taken to ensure child safety? If so, are the parents taking such action or do they need assistance to take such action?
- Is the maltreatment substantiated? \*
- Will the case be opened for ongoing services?

**\* NOTE:** A determination by the CPS system as to whether abuse or neglect occurred is required by law. A determination by the CPS system as to whether a specific person abused the child is not required. Generally, it is a law enforcement function to determine if the alleged maltreater might be guilty of a crime and must be held accountable or must be controlled in order to protect the public.

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### **Interview Protocol**

- The first contact must be with the child's parent, unless there are exigent circumstances and the parent cannot be contacted within the timeframe needed to respond to the emergency or there is a court order for an interview with the child. If exigent circumstances exist, there is discretion to conduct the interview as necessary for protection of a child or others. Supervisory and/or legal consultation is advised, if possible, prior to taking action based on a presumption of exigent circumstances.
- If the alleged maltreater continues to have access to the child, an interview with the parent is required by statute "if possible". "If possible", in these standards, means an interview with the parent must be conducted unless the parent refuses to be interviewed.
- A child cannot be interviewed without the permission of the parent, except as discussed in the bullet below, unless there are exigent circumstances or there is a court order for the interview. An interview with the child is not required if the alleged maltreater does not have access to the child. If the alleged maltreater continues to have access to the child, observation of or an interview with the child is required by s.48.981(3)(c)1., Stats. If CPS is interviewing the child based on parental permission alone (without a court order and absent exigent circumstances), the parent may determine who is present at an interview with the child; this decision is not solely at the discretion of the CPS worker.
- If the child victim is in a foster home or relative placement under a court order, the agency with court-ordered supervision of the child has the authority to grant permission to interview the child for the purpose of determining the child's need for protection or services. If the parent is not contacted for permission to interview the child (the supervising agency authorizes the interview instead), the parent must be advised of the allegations as soon as possible thereafter.
- If a parent has arranged for his or her child to be temporarily cared for by another person, and in the absence of exigent circumstances or a court order for an interview, the agency must seek to contact the parent first. This contact may be by phone. If the parent cannot be reached and will be unreachable within the timeframe for response determined at Access, the agency may request permission to interview the child from the person with whom the parent has placed the child for temporary care.
- If the agency intends to make a maltreater determination (i.e., that a specific person abused the child), the interview protocol must include an interview by CPS with the alleged maltreater, as well as an interview with the child and a parent. The interview with the alleged maltreater must begin with advising that person of the allegations against him or her.

If the person refuses to be interviewed by CPS, CPS may review the information gained from collaterals (e.g. law enforcement or licensing staff, etc.) throughout the assessment process and determine whether it is sufficient to support a maltreater determination.

If the agency intends to make a maltreater determination, the agency has a responsibility to explain the CPS assessment process to the parent, including how the agency collaborates with law enforcement, and the possible actions that might occur as a result of that process, including the possibility of an appeal hearing and the child being subpoenaed to testify at the hearing, however unlikely. The parent needs this information in order to make an informed decision as to whether to consent to the child being interviewed.

### **When Maltreatment Should be Assessed in Accordance with the Standard for "Maltreatment By Parents"**

In the majority of cases of maltreatment by a Secondary Caregiver, the parents of the child did not knowingly or negligently contribute to the child's maltreatment. When a parent does contribute, the concerns must be

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assessed using the Standard for "Maltreatment By Parents". Generally, the judgment about whether a parent contributed is made at Access. (Reference "CPS Access Standard for Receipt and Analysis of Report Information", pages 14 and 15.) It is important to make this judgment at Access as the protocols for maltreatment by Secondary Caregivers and Non-Caregivers differ significantly from the Primary Caregiver protocols.

If during the course of conducting the initial assessment the CPS worker gathers information that indicates that a parent contributed to the maltreatment or is otherwise failing to protect the child, the requirements for Maltreatment By Parents must be followed. The Access Standard, Appendix 5: Parental Protective Capacities can assist with this judgment. A judgment that a parent contributed or is failing to protect the child may **not** be based solely on the fact that a parent declines to allow the child to be interviewed. In fact, this may be a demonstration of the parent's protectiveness of the child.

Judgments about whether a parent is failing to protect must take into account whether the parent reasonably has the ability to effect a safe environment on his or her own.

## **INTERIM REVISIONS TO THE CHILD PROTECTIVE SERVICES INVESTIGATION STANDARDS**

Draft 5, November 2005

### **Maltreatment by Non-Caregivers**

“Non-Caregivers” re: strangers, neighbors, adult acquaintances and other children who have never had supervisory responsibility for the child. The individual can not have ever shared the child's home.

#### **Purpose**

In responding to reports of maltreatment by Non-Caregivers, the Child Protective Service (CPS) purposes are to:

- With parents, assess the current safety of the child;
- With parents, assess the child's need for services related to the alleged maltreatment; and
- Support the child's parents in providing protection and services for the child, if needed

#### **Who are “Non-Caregivers”?**

For the purpose of this Standard, individuals who are Non-Caregivers are: strangers, neighbors, adult acquaintances and other children who have never had supervisory responsibility for the child. The individual cannot have ever shared the child's home.

#### **Collaboration/Referrals**

The screened-in report must be referred to the appropriate local law enforcement agency if the alleged maltreater is an adult, in accordance with the Standard for Collaboration with Law Enforcement Agencies on Child Abuse and Neglect Reports. This enables the law enforcement and criminal justice system to pursue investigation of the alleged maltreater, if warranted, in order to protect the public safety.

Since CPS is, by design, a family-focused intervention, this system does not have remedies to address instances of maltreatment by other non-caregivers. This heightens the need for collaboration with law enforcement and makes sharing information with the criminal justice system, which has those remedies, imperative.

If the CPS agency chooses to make a maltreater determination, the agency must first coordinate with the law enforcement system to assure that a CPS maltreater determination will not undermine a criminal investigation or prosecution. Agencies may wish to address this issue in their MOU with law enforcement agencies.

#### **Decisions to be Made in the Course of the Initial Assessment/Investigation**

The following decisions and supporting rationale must be documented in the case record:

- Is the child in need of protection or services?
- If yes, does the parent need additional information, assistance or advocacy to provide the needed protection or services?
- Is there information suggesting action must be taken to ensure child safety? If so, are the parents taking such action or do they need assistance to take such action?
- Is the maltreatment substantiated? \*
- Will the case be opened for ongoing services?

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**\* NOTE:** A determination by the CPS system as to whether abuse or neglect occurred (maltreatment determination) is required by law. A determination by the CPS system as to whether a specific person abused the child (maltreater determination) is not required. Generally, it is a law enforcement function to determine if the alleged maltreater might be guilty of a crime and must be held accountable or must be controlled in order to protect the public.

### **Interview Protocol**

The determining factor in the interview protocol is whether the alleged maltreater continues to have access to the child. Although the statutes do not require an interview with or observation of the child and an interview with a parent in non-caregiver cases, there are the same increased questions about the child's need for protection, when the alleged maltreater continues to have access, as there are in secondary caregiver cases. An interview with the alleged maltreater is not required and may be counter-indicated if law enforcement is conducting an investigation. CPS agencies may wish to address this issue in their MOU with law enforcement agencies.

- If interviewing is conducted as part of the initial assessment, the first contact, absent a court order for the interview, must be with the child's parent, unless there are exigent circumstances and the parent cannot be contacted within the timeframe needed to respond to the emergency. Supervisory and/or legal consultation is advised, if possible, prior to taking action based on a presumption of exigent circumstances.
- An interview with the child is not required. If the agency wishes to interview the child, permission of the parent is required, except as discussed in the bullet below, unless there are exigent circumstances or there is a court order for the interview. If exigent circumstances exist, there is discretion to conduct the interview as necessary for protection of a child or others. If CPS is interviewing the child based on parental permission alone (without a court order and absent exigent circumstances), the parent may determine who is present at an interview with the child; this decision is not solely at the discretion of the CPS worker.
- If the child victim is in a foster home or relative placement under a court order, the agency with court-ordered supervision of the child has the authority to grant permission to interview the child for the purpose of determining the child's need for protection or services. If the parent is not contacted for permission to interview the child (the supervising agency authorizes the interview instead), the parent must be advised of the allegations as soon as possible thereafter.
- If a parent has arranged for his or her child to be temporarily cared for by another person, and in the absence of exigent circumstances or a court order for an interview, the agency must seek to contact the parent first. This contact may be by phone. If the parent cannot be reached and will be unreachable within the timeframe for response determined at Access, the agency may request permission to interview the child from the person with whom the parent has placed the child for temporary care.
- If the agency intends to make a maltreater determination (i.e., that a specific person abused the child), the interview protocol must include an interview by CPS with the alleged maltreater, as well as an interview with the child and a parent. The interview with the alleged maltreater must begin with advising that person of the allegations against him or her.

If the person refuses to be interviewed by CPS, CPS may review the information gained from collaterals (e.g. law enforcement or licensing staff, etc.) throughout the assessment process and determine whether it is sufficient to support a maltreater determination.

If the agency intends to make a maltreater determination, the agency has a responsibility to explain the CPS assessment process, including how the agency collaborates with law enforcement, to the parent and the possible actions that might occur as a result of that process, including the possibility of an appeal hearing and the child being subpoenaed to testify at the hearing, however unlikely. The parent needs this information in order to make an informed decision as to whether to consent to the child being interviewed.

## **INTERIM REVISIONS TO THE CHILD PROTECTIVE SERVICES INVESTIGATION STANDARDS**

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### **When Maltreatment Should be Assessed in Accordance with the Standard for “Maltreatment By Parents”**

In the majority of cases of maltreatment by a Non-Caregiver, the parents of the child did not knowingly or negligently contribute to the child's maltreatment. When a parent does contribute, the concerns must be assessed using the Standard for “Maltreatment By Parents”. Generally, the judgment about whether a parent contributed is made at Access. (Reference “CPS Access Standard for Receipt and Analysis of Report Information”, pages 14 and 15.) It is important to make this judgment at Access as the protocols for maltreatment by Secondary Caregivers and Non-Caregivers differ significantly from the Primary Caregiver protocols.

If during the course of conducting the initial assessment the CPS worker gathers information that indicates that a parent contributed to the maltreatment or is otherwise failing to protect the child, the requirements for Maltreatment By Parents must be followed. The Access Standard, Appendix 5: Parental Protective Capacities can assist with this judgment. A judgment that a parent contributed or is failing to protect the child may **not** be based solely on the fact that a parent declines to allow the child to be interviewed. In fact, this may be a demonstration of the parent's protectiveness of the child.

Judgments about whether a parent is failing to protect must take into account whether the parent reasonably has the ability to effect a safe environment on his or her own.



**INTERIM REVISIONS  
TO THE  
CHILD PROTECTIVE SERVICES INVESTIGATION STANDARDS**

Draft 5, November 2005

**Sexual Activity Between Children  
or Involving a Peer**

This standard addresses the following types of reports:

- sexual *contact* (as defined in s. 940.225(5)(b)1. and s. 948.01(5)(a), Stats. and s. 940.225(5)(b)2. and s. 948.01(5)(b), Stats) between children that is not normal developmental behavior and where the contact was not mutual, and
- sexual *intercourse* (as defined in s.940.225(5)(c), Stats.) between children where at least one child is 15 years of age or less or where a child of any age did not consent to the sexual intercourse

Reports of sexual *contact* between children or between a child and an adult peer that is normal developmental behavior and where the contact is mutual and devoid of elements of assault or coercion should be screened out at Access [Reference the Access Standard]. A “peer” is a person who, in terms of general cognitive development and social role, has equal standing with the child. A caregiver or other person who exercises or has exercised temporary or permanent control over a child can never be considered a peer.

If both children are being assessed, a separate case record and initial assessment must be completed for the family of each child. [Note: Sexual contact between siblings must adhere to the statutory requirements for reports of maltreatment involving a Primary Caregiver.]

**Purpose**

In responding to, reports of sexual activity between children or between a child and an adult peer, the Child Protective Service (CPS) purpose is to:

- With parents, assess the current safety of the child;
- With parents, assess the child's need for services related to the alleged maltreatment; and
- Support the child's parents in providing protection and services for the child, if needed

**Collaboration/Referrals**

A screened-in referral must be made to the local law enforcement agency in accordance with s. 48.981(3)(a)3., Stats., and the *Standard for Collaboration with Law Enforcement Agencies*. The statutes also require coordination with law enforcement agencies in planning and executing the investigation of the report. Each agency should address how these cases will be handled in its MOU with law enforcement agencies. Further information on coordination with law enforcement agencies is found in the *Standard for Collaboration with Law Enforcement Agencies (DCFS Numbered Memo 2004-05)*.

**Decisions to be Made in the Course of the Initial Assessment/Investigation**

The following decisions and supporting rationale must be documented in the case record:

- Is the child in need of protection or services?
- If yes, does the parent need additional information, assistance or advocacy to provide the needed protection or services?
- Is there information suggesting action must be taken to ensure child safety? If so, are the parents taking such action or do they need assistance to take such action?
- Is this an incident of mutual sexual activity or was there any use, stated or implied, of coercion, threat or force, or an absence of freely given consent?

## **INTERIM REVISIONS TO THE CHILD PROTECTIVE SERVICES INVESTIGATION STANDARDS**

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- Is the maltreatment substantiated? \*
- Is there information or behavior suggesting that the child may have been previously sexually abused? If so, proceed with the investigation in keeping with the appropriate Standard
- Will the case be opened for ongoing services?

**\* NOTE:** A determination by the CPS system as to whether abuse or neglect occurred (maltreatment determination) is required by law. A determination by the CPS system as to whether a specific person abused the child (maltreater determination) is not required. Generally, it is a law enforcement function to determine if the alleged maltreater might be guilty of a crime and must be held accountable or must be controlled in order to protect the public.

### **Investigation/Assessment Protocol and Interview Content**

- If interviewing is conducted as part of the initial assessment, the first contact, absent a court order for the interview, must be with the child's parent, unless there are exigent circumstances and the parent cannot be contacted within the timeframe needed to respond to the emergency. Supervisory and/or legal consultation is advised, if possible, prior to taking action based on a presumption of exigent circumstances.
- An interview with the child is not required. If the agency wishes to interview the child, permission of the parent is required, except as discussed in the bullet below, unless there are exigent circumstances or there is a court order for the interview. If exigent circumstances exist, there is discretion to conduct the interview as necessary for protection of a child or others. If CPS is interviewing the child without a court order and absent exigent circumstances, the parent may determine who is present at an interview with the child; this decision is not solely at the discretion of the CPS worker.
- If the child victim is in a foster home or relative placement under a court order, the agency with court-ordered supervision of the child has the authority to grant permission to interview the child for the purpose of determining the child's need for protection or services. If the parent is not contacted for permission to interview the child (the supervising agency authorizes the interview instead), the parent must be advised of the allegations as soon as possible thereafter.
- If a parent has arranged for his or her child to be temporarily cared for by another person, and in the absence of exigent circumstances or a court order for an interview, the agency must seek to contact the parent first. This contact may be by phone. If the parent cannot be reached and will be unreachable within the timeframe for response determined at Access, the agency may request permission to interview the child from the person with whom the parent has placed the child for temporary care.
- If the agency intends to make a maltreater determination (i.e., that a specific child abused the child), the interview protocol must include an interview by CPS with the alleged maltreater, as well as an interview with the child victim and a parent. The interview with the alleged maltreating child cannot be conducted without permission of the child's parent. The child's parent must be advised of the allegations against the child and the interview with the child, if granted by the parent, must begin with advising that child of the allegations against him or her.

If the parent refuses to allow the child to be interviewed by CPS, CPS may review the information gained from collaterals (e.g. law enforcement or licensing staff, etc.) throughout the assessment process and determine whether it is sufficient to support a maltreater determination.

## **INTERIM REVISIONS TO THE CHILD PROTECTIVE SERVICES INVESTIGATION STANDARDS**

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- If the agency intends to make a maltreater determination, the agency has a responsibility to explain the CPS assessment process to the parent, including how the agency collaborates with law enforcement, and the possible actions that might occur as a result of that process, including the possibility of an appeal hearing and the child being subpoenaed to testify at the hearing, however unlikely. The parent needs this information in order to make an informed decision as to whether to consent to the child being interviewed.

### **When Maltreatment Should be Assessed in Accordance with the Standard for “Maltreatment By Parents”**

In the majority of cases of sexual activity, the parents of the child did not knowingly or negligently contribute to the child's maltreatment or sexual activity. When a parent does contribute, the concerns must be assessed using the Standard for “Maltreatment By Parents”. Generally, the judgment about whether a parent contributed is made at Access. (Reference “CPS Access Standard for Receipt and Analysis of Report Information”, pages 14 and 15.) It is important to make this judgment at Access as the protocols for maltreatment by Secondary Caregivers and Non-Caregivers differ significantly from the Primary Caregiver protocols.

If during the course of conducting the initial assessment the CPS worker gathers information that indicates that a parent contributed to the sexual activity or maltreatment or is otherwise failing to protect the child, the requirements for Maltreatment By Parents must be followed. The Access Standard, Appendix 5: Parental Protective Capacities can assist with this judgment. A judgment that a parent contributed or is failing to protect the child may **not** be based solely on the fact that a parent declines to allow the child to be interviewed. In fact, this may be a demonstration of the parent's protectiveness of the child.

Judgments about whether a parent is failing to protect must take into account whether the parent reasonably has the ability to effect a safe environment on his or her own. A parent does not have complete control over the activities and behaviors of pre-teen and teenaged children. Therefore, the fact that a child is sexually active does not mean that a parent is failing to protect.